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VIA ELECTRONIC COPY AND OVERNIGHT

July 19, 2004

Office of the Comptroller of the Currency  
250 E Street, SW  
Public Reference Room  
Mail Stop 1-5  
Washington, DC 20219  
Attention: Docket No. 04-12  
[Regs.comments@occ.treas.gov](mailto:Regs.comments@occ.treas.gov)

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve  
System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Docket No. OP-1189  
[Regs.comments@federalreserve.gov](mailto:Regs.comments@federalreserve.gov)

Mr. Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Attention: Comments/OES  
[comments@fdic.gov](mailto:comments@fdic.gov)

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: No. 2004-27  
[Regs.comments@ots.treas.gov](mailto:Regs.comments@ots.treas.gov)

Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609  
Attention: File No. S7-22-04  
[Rule-comments@sec.gov](mailto:Rule-comments@sec.gov)

Ladies and Gentlemen:

Re: Proposed Interagency Statement on Sound Practices concerning Complex Structured Finance Activities

Bank of America Corporation ("Bank of America") appreciates the opportunity to comment on the proposed Interagency Statement on Sound Practices Concerning Complex Structured Finance Activities issued by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation and the Securities and Exchange Commission (collectively, the

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“Agencies”). 69 Fed. Reg. 28980-28991 (23004) (the “Proposed Statement”). Bank of America is one of the world’s leading financial services companies and is the sole shareholder of Bank of America, N.A., one of the largest banks in the United States. Through the nation’s largest financial services network, Bank of America provides financial products and services to 30 million households and two million businesses, and also provides international corporate financial services for clients around the world.

Bank of America is a member of, and has actively participated in, the formulation of comment letters on the Proposed Statement being submitted by the Clearing House Association L.L.C. and the Bond Market Association, the International Swaps and Derivatives Association, Inc., and the Securities Industry Association (the “Trade Associations”). We fully support the comments of the Trade Associations and, accordingly, we have limited our comments in this letter to those aspects of the Proposed Statement that we believe deserve particular emphasis and amplification.

We support the Agencies’ proposal to provide guidance to financial institutions in developing internal controls and risk management procedures to help identify and address the reputational, legal and other risks associated with complex structured finance transactions (“CSFTs”). We agree with the Agencies that financial institutions should have effective policies and procedures in place to identify CSFTs that may involve heightened reputational and legal risk, to provide for a level of review that is commensurate with those risks, and to protect the institutions from participating in illegal or questionable transactions.

We are concerned, however, about a number of aspects of the Proposed Statement. First, particularly given the current legal and political climate, the Proposed Statement could be improperly construed as creating new causes of action or theories of civil liability on the part of financial institutions to third parties. We believe that it is crucial that the Proposed Statement be revised to clarify that it is not intended to suggest any right of action or theory of liability that does not currently exist; rather, it is intended to help financial institutions conduct complex structured finance activities consistent with safe and sound banking practices and to help financial institutions protect themselves against unscrupulous customers. We join with the Trade Associations in urging the Agencies to modify language in the Proposed Statement that can have the effect of exacerbating this concern. Specifically, we think the Proposed Statement must have an explicit disclaimer of any intention to create rights of action or theories of liability for third parties.

Second, with respect to regulatory compliance, we believe it is essential that financial institutions not be made the policemen of the securities disclosures of their issuer-customers. Accurate securities disclosure and proper tax, accounting, and regulatory treatment are the obligations of the issuer, its accountants and its counsel, and are subject to review by the Securities and

Exchange Commission. Financial institutions lack the information, the access and the authority to perform this role.

Third, it is essential that the Proposed Statement be revised to recognize the differences among both institutions and transactions. The Proposed Statement should articulate the principals upon which from the foundation of appropriate policies, procedures and processes and eliminate details that could result in the creation of an examiner's checklist, with a prescribed list of requirements for all institutions and all transactions. The Proposed Statement should be revised to explicitly acknowledge that financial institutions will need flexibility as they implement appropriate policies, procedures and processes, and it should modify or delete certain language that could encourage a checklist approach. The Agencies should also explicitly acknowledge their willingness to review, evaluate and inform financial institutions as to the adequacy of the policies, procedures and processes they develop to address the issues faced by each such institutions, including the differing roles undertaken in a particular transaction (e.g., agent versus syndicated member) and the differing issues presented by such transactions (e.g., cross-border transactions involving non-U.S. tax laws and non-U.S. GAAP accounting standards).

Fourth, we believe that several key revisions should be made in the Proposed Statement to avoid creating unattainable high standards, (such as "complete and accurate" information regarding accounting treatment), unreasonable responsibilities (such as a requirement of "independent review") and unwarranted exposures (such as assertion of "assumption of risk"). Financial institutions should, instead, be expected to adopt policies, procedures and processes that balance risk management considerations, reputation risk and business practicalities, consistent with safe and sound banking considerations based on reasonable investigation.

In addition, the Proposed Statement should be framed as so to not put U.S. financial institutions at a competitive disadvantage vis-à-vis other financial institutions that are not subject to the Agencies' jurisdiction. We urge the Agencies to make every effort to harmonize the Proposed Guidance with existing international standards and in coordination with their international counterparts to minimize competitive disparities.

We believe the documentation practices in the Proposed Guidance exceed legitimate business needs and applicable legal standards. Far from representing good "risk management practices" for the institution, the proposed standards appear more likely to chill open and robust discussion with customers. We are also concerned about the wisdom (and the burden) of requiring institutions to generate and retain documentation of the rejection of specific transactions – regardless of the level at which the determination is made. Rejection does not require comprehensive evaluation of relevant considerations. As a result, a determination not to proceed with a transaction is more likely than not to be made without comprehensive consideration of

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potentially relevant factors and, as a result, relevant records would not be complete and would not constitute a reliable resource for review of deliberations and considerations.

Finally, we are concerned that certain statements in the Proposed Statement impose an unduly high standard (i.e., "ultimate responsibility") on the board of directors of financial institutions and may discourage qualified individuals from serving as directors. The board of directors should be able to delegate responsibility to monitor the financial institutions compliance with its policies, procedures and processes for CSFT's to senior management subject to an annual reporting requirement to the board or an appropriate board committee.

We believe these are the major concerns presented by the Proposed Statement. Bank of America appreciates the opportunity to submit these comments and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any questions, please contact the undersigned at (704) 388-6724.

Sincerely,

*John H. Huffstutler*

John H. Huffstutler  
Associate General Counsel